

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT**

**ELIZABETH MOFFITT  
and MATTHEW MOFFITT,  
Plaintiffs**

**v.**

**ICYNENE, INC.,  
NICHOLAS KRYWAKA, d/b/a  
Environmental Foam of Vermont,  
ENVIRONMENTAL FOAM OF  
VERMONT, INC.,  
Defendants**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**File No. 1:04-CV-115**

**ORDER**

The Magistrate Judge's Report and Recommendation was filed December 2, 2005 (Paper 85). After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendant Icynene, Inc.'s motion for summary judgment (Doc. 46) is GRANTED as to the implied warranty of fitness for a particular purpose, consumer fraud and negligence claims, and DENIED as to the implied warranty of merchantability claim under the UCC and MMWA.

Plaintiffs' motions for partial summary judgment on liability for consumer fraud and breach of warranty (Docs. 41 and 44) is DENIED.

Plaintiffs' motion for partial summary judgment (Doc. 43) is GRANTED as to the claim that they are "consumers," and DENIED as to the claim that they are "owners."

Plaintiffs' motion in limine (Doc. 43) is DENIED.

The referral of this case to the Magistrate Judge is hereby terminated. This case shall be placed on the first trial calendar after February 1, 2006.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 27<sup>th</sup> day of December, 2005.

/s/ J. Garvan Murtha  
J. Garvan Murtha  
United States District Judge